

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

: _____ :

THE UNITED STATES OF AMERICA, :
Plaintiff, :

vs.

: Case No: 12-CR-728 PG

[1] BETSIAN CARRASQUILLO-PENALOZA, :
Defendant. :

: _____ :

TRANSCRIPT OF SENTENCING HEARING
HELD BEFORE THE HONORABLE JUAN M. PÉREZ-GIMÉNEZ
JOSÉ V. TOLEDO U.S. COURTHOUSE, OLD SAN JUAN, PUERTO RICO
FRIDAY, MAY 30, 2014, BEGINNING AT 12:21 P.M.

: _____ :

A P P E A R A N C E S:

For the United States of America:

Assistant U.S. Attorney Marshal D. Morgan

For the Defendant:

Assistant Federal Public Defender Joannie Plaza-Martinez

ALSO PRESENT:

Omar Flaquer-Mendoza, Courtroom Deputy Clerk

Edna Brayfield, Court Interpreter

Brenda Dávila, Probation Officer

Sentencing Hearing - [1] Betsian Carrasquillo-Penalosa

INDEX TO EXHIBITS

GOVERNMENT'S
EXHIBIT

FOR
ADM

1.....Video CD.....12
1A...Transcript including translation of video.....12

Sentencing Hearing - [1] Betsian Carrasquillo-Penalosa

1 THE COURTROOM DEPUTY: Criminal case 12-728.
2 United States of America versus Betsian
3 Carrasquillo-Penalosa. Case called for sentence. On
4 behalf of the government, Assistant U.S. Attorney
5 Marshal Morgan. On behalf of the defendant,
6 Assistant Federal Public Defender Joannie Plaza.

7 MS. PLAZA-MARTÍNEZ: Good afternoon, Your
8 Honor.

9 THE COURTROOM DEPUTY: The defendant will be
10 present -- and will be assisted by the official court
11 interpreter.

12 MR. MORGAN: Good morning, Your Honor. The
13 United States is ready to proceed.

14 MS. PLAZA-MARTÍNEZ: Your Honor, may I
15 address the Court in housekeeping matters before my
16 client comes in?

17 THE COURT: Sure.

18 MS. PLAZA-MARTÍNEZ: First, I would ask that
19 the sentencing hearing be sealed, and that the public
20 be excused from the courtroom.

21 THE COURT: Not during the sentencing
22 hearing. During the showing of the video, yes; but
23 during the sentencing hearing, no.

24 MS. PLAZA-MARTÍNEZ: Well, Your Honor, part
25 of the allocution, I would say to the Court, includes

Sentencing Hearing - [1] Betsian Carrasquillo-Penalosa

1 information that it's not -- that should not be
2 public record based on things that have been filed by
3 the parties, which goes to mitigation. And it's
4 inevitable that when we allocute the case it will
5 divulge the relationship between the victim and my
6 client, and that information should not be made
7 public. And by having the public hearing it's
8 inevitable.

9 MR. MORGAN: Your Honor, as part of the
10 Department of Justice's regulation, I do need to
11 oppose any request to seal the courtroom of these
12 proceedings either during the allocution or during
13 the showing of the video.

14 (Defendant enters the room.)

15 MR. MORGAN: I can advance to the Court that
16 the video has all faces of agents and minors and
17 other participants completely blocked out. The only
18 individuals whose face is seen is that of the
19 defendant. So, there wouldn't be any problem with
20 respect to that. It's just the audio and big white
21 circles in front of their faces; there's absolutely
22 no way to identify who is being shown in the video so
23 I would respectfully request that the Court
24 reconsider any order to seal the courtroom even
25 during the video.

Sentencing Hearing - [1] Betsian Carrasquillo-Penalzoa

1 And of course this is not a child
2 pornography case; this is just the adults negotiating
3 and the minor whose face is blocked out. There's no
4 contraband associated with the videos -- with the
5 video.

6 THE COURT: I can advise counsel that I have
7 read the report that was filed together with your
8 motion to restrict from Dr. Margarida, I read it
9 completely. I'm aware of the background of
10 Ms. Carrasquillo. But if you want to elaborate on
11 that.

12 MS. PLAZA-MARTÍNEZ: Well, I think that
13 because of the particular situation with the victim
14 in this case I feel that it's only compelling for me
15 to ask the Court to take these measures, but I will
16 stand by the Court's ruling.

17 And also, Your Honor, I understand the Court
18 has already made a ruling but I filed a motion
19 opposing the government's presentation of the video.
20 And, as I stated in the motion, the government has
21 not shown any valid reason to present when we have an
22 agreement, and in this case the mandatory minimum is
23 actually higher than the guideline range in the PSR.
24 So, although I'm not -- I'm not saying that the
25 government has specifically stated.

Sentencing Hearing - [1] Betsian Carrasquillo-Penalzoa

1 It seems to appear that the presentation of
2 the video will only come to aggravation of the crime.
3 And I think that, if that would be the case, that
4 would be a violation of our contract, and that's what
5 I oppose the presentation of the video that will just
6 show the evidence that was relayed in detail by the
7 probation officer in four pages of the report.

8 My client accepted in the version of facts,
9 it's been detailed in all the documents on the
10 record; so, I think it's really unnecessary,
11 cumulative, and will serve no purpose but to
12 aggravate the circumstances of the offense.

13 MR. MORGAN: Your Honor, with respect to
14 that, let the record be absolutely clear that our
15 suggestion of showing this video is not in any way
16 intended to suggest to the Court that it should
17 consider a sentence higher than the ten years which
18 is recommended by the parties. In fact, I
19 respectfully suggest that the defense counsel's
20 argument begins with the wrong premise.

21 Your Honor, we have so many cases here in
22 Puerto Rico that we find ourselves oftentimes at
23 sentencing simply staying quiet, not presenting any
24 evidence, just relying on the arduous work of the
25 probation officers. I suggest to the Court that the

Sentencing Hearing - [1] Betsian Carrasquillo-Penalosa
1 better practice -- and the rules actually provide for
2 the United States substantiating the evidence that
3 they have and the recommendation that they're making
4 now.

5 In this particular case, the reason that I
6 stand so firmly behind our recommendation of ten
7 years and respectfully suggest that the Court follow
8 that, notwithstanding the video -- notwithstanding
9 what it shows in the video, because the guidelines do
10 come out to less than the --

11 THE COURT: According to statute, the
12 guideline is 120 months, the lower end of the
13 guideline; because --

14 MR. MORGAN: That's the statute, yes.

15 THE COURT: Being a mandatory minimum
16 sentence, then it becomes a guideline sentence. So,
17 it is a guideline sentence. That's why in your
18 recommendation it's stated that the parties agree to
19 recommend a sentence at the lower end of the
20 guidelines, which is the mandatory minimum becomes
21 the lower end of the guidelines.

22 MR. MORGAN: Well, yes. And in this
23 particular case if her criminal history were higher
24 than --

25 THE COURT: Than three.

Sentencing Hearing - [1] Betsian Carrasquillo-Penalosa

1 MR. MORGAN: -- than three then we would
2 fall back on what the guidelines themselves.

3 THE COURT: That's right.

4 MR. MORGAN: To a certain extent it is
5 semantics, but --

6 THE COURT: It's a guideline application is
7 what it is.

8 MR. MORGAN: But just to make the record
9 clear, I know that the Court has taken an interest in
10 this case from the very beginning. Here in Puerto
11 Rico this was one of the very first cases of human
12 trafficking that we have prosecuted -- at least in
13 the United States Attorneys' Office -- and it's a
14 very important case to both the Court and to our
15 office. And that's primarily the reason I was
16 suggesting that we show the video.

17 And, as I said, the video is redacted and
18 doesn't show any identities of those involved other
19 than that of the defendant.

20 THE COURT: Also, the Court is interested in
21 seeing the video because, although I highly respect
22 Dr. Margarida Julia's qualifications and having read
23 her psychodiagnostic evaluation of
24 Ms. Carrasquillo -- which, by the way, was not
25 reported to the probation officer that she was being

Sentencing Hearing - [1] Betsian Carrasquillo-Penalosa
1 evaluated by Ms. Carrasquillo [sic], known to the
2 Court anyway, last night I received the report that
3 was filed last night. It was filed yesterday, I read
4 it last night. And I -- to satisfy myself that I
5 understand completely what it said in the evaluation,
6 I need to see the defendant, if there's evidence at
7 the time when the actual crime was being committed,
8 to sort of evaluate.

9 Although I respect her knowledge so much,
10 but I need to evaluate. I need to put a context as
11 to what the crime is and the person,
12 Ms. Carrasquillo. And I think that what you
13 expressed, what's in the video, would help the Court
14 in that sense; so, we will show the video.

15 MS. PLAZA-MARTÍNEZ: We just want the record
16 to reflect our objection. And also I understand the
17 Court's position. And I thought -- by filing my
18 reports I thought that that would be probably the
19 Court's reaction and with the Court's interest. My
20 objection is for the government to offer it into
21 evidence when nobody requested it in the first place,
22 because it gives the impression either for voration
23 or for any other purpose besides the purpose that we
24 have here today, Your Honor. But I stand by the
25 Court's ruling.

Sentencing Hearing - [1] Betsian Carrasquillo-Penalosa

1 THE COURT: Well, the government also has a
2 duty to the community to show a fact that is
3 happening in Puerto Rico, to show that this does
4 exist in Puerto Rico, to help parents understand that
5 they have to a better job of parenting so as not to
6 have their daughters fall into this type of crime or
7 being abused, as the victims in this case were being
8 abused; and to raise the conscious of the community,
9 of the people, to combat, be able to combat this
10 epidemic which is -- every day is growing bigger and
11 bigger and it's covering more and more victims.

12 So, I think that the government does have
13 that right and I'm going to grant it, that right --
14 I'm going to grant that right.

15 MS. PLAZA-MARTÍNEZ: Then, Your Honor, may I
16 then request that the government be allowed to
17 present the video first, their allocution, and then I
18 go last, if that's okay with the Court?

19 THE COURT: There's no problem with that.

20 MS. PLAZA-MARTÍNEZ: Thank you. May we sit
21 on the table?

22 THE COURT: Yes, of course.

23 MR. MORGAN: Your Honor, I have for
24 evidentiary purposes what's been marked as
25 Government's ID No. 1. It's a disk containing the

Sentencing Hearing - [1] Betsian Carrasquillo-Penalosa
1 video. I have downloaded the video to my desktop
2 because I tried to play it from the disk and it's too
3 disjointed.

4 THE COURT: Counsel, counsel, forget about
5 the technicalities issues. Just play the video.

6 MR. MORGAN: All right. I also have -- if I
7 could admit this as 1A, the transcript and
8 translation into English because the video is in
9 Spanish.

10 THE COURT: All right. Please do.

11 PROBATION OFFICER: Before the video is
12 played, may I approach, Your Honor.

13 MR. MORGAN: Transcript and translation.

14 (Off-the-record sidebar held.)

15 THE COURT: All right. Play the video.

16 MR. MORGAN: Okay. Your Honor, if it's okay
17 with the Court, I was thinking about beginning to
18 play this at least at minute 9 and 30 seconds. The
19 reason --

20 THE COURT: Counsel, play the video,
21 whichever way you want to play it, whichever way the
22 government wishes to present its evidence.

23 MR. MORGAN: Okay, well, I'm telling you
24 that I'm going to start it at 9:30 and that begins on
25 page 14 of the transcript.

Sentencing Hearing - [1] Betsian Carrasquillo-Penalzoa

1 THE COURT: Okay.

2 (Videotape is played.)

3 THE COURT: Counsel, approach the bench.

4 (Off-the-record sidebar held.)

5 THE COURT: All right. After having met
6 with counsel here at sidebar, the Court understands
7 that there's additional information that needs to be
8 obtained, so that the sentence can be imposed.
9 Therefore, I grant defendant until June 13th to
10 obtain that information for the Court. Once I
11 receive it -- if I receive it sooner than that, then
12 I'll reset the hearing for sentencing. So, we'll
13 continue the sentencing hearing for a future date.

14 MR. MORGAN: Very well, Your Honor.

15 THE COURT: Thank you.

16 MS. PLAZA-MARTÍNEZ: Thank you. Permission
17 to withdraw.

18 THE COURT: You may withdraw.

19 (Video CD was marked in evidence by the
20 Courtroom Deputy as Government's Exhibit No. 1.)

21 (Transcript including translation of video
22 was marked in evidence by the Courtroom Deputy as
23 Government's Exhibit No. 1A.)

24 (Sentencing Hearing adjourned at 1:12 p.m.)

25 ---

Sentencing Hearing - [1] Betsian Carrasquillo-Penalosa

1 UNITED STATES DISTRICT COURT)
2 OF) ss.
3 PUERTO RICO)
4
5
6

7 CERTIFICATE
8
9

10 I, EVILYS E. CARRIÓN-ESQUILÍN, hereby
11 certify that the proceedings and evidence are
12 contained fully and accurately, to the best of my
13 ability, in the notes recorded stenographically by
14 me, at the sentencing hearing in the above matter;
15 and that the foregoing is a true and accurate
16 transcript of the same.
17

18 /s/ Evilys E. Carrión-Esquilín

19 EVILYS E. CARRIÓN-ESQUILÍN, RPR
20 Official Court Reporter
21 United States District Court
22 Federal Building, Room 200
23 San Juan, Puerto Rico 00918
24 787-772-3377
25